



STATE OF MISSISSIPPI
HALEY BARBOUR
GOVERNOR
MISSISSIPPI DEPARTMENT OF ENVIRONMENTAL QUALITY
TRUDY D. FISHER, EXECUTIVE DIRECTOR

November 20, 2008

VIA Hand Delivery

Mr. Rodney Bolton
Hercules Inc
613 West 7th Street
Hattiesburg, Mississippi 39401

Re: Notice of Violation
Hercules Inc
Hattiesburg,, Mississippi
Forrest County
Impounding Basin Sludge Hazardous Waste Analyses
Results

Dear Mr. Bolton:

Our review of Hercules' impounding basin response package dated October 9, 2008 revealed the following apparent violations:

1. MHWMR. 270.1(c) and § 270.71(a), prohibit a facility from treating, storing or disposing of hazardous waste without first obtaining a permit or interim status. Hercules was treating hazardous wastes by dilution and by allowing benzene to be stored in a surface impoundment. **Hercules was disposing of hazardous wastes, by placing hazardous waste in a surface impoundment so that the hazardous waste or hazardous constituents may enter the environment, be emitted into the air, or discharge into groundwater. Hercules does not have a permit or interim status for the treatment, storage or disposal of hazardous waste. Therefore, Hercules is in violation of MHWMR 270.1(c) and § 270.71(a).**
2. MHWMR 264, Subpart K and MHWMR Part 265, Subpart K, requires a facility that treats, stores, or disposes of hazardous wastes in surface impoundments, meet specified design requirements, including double liners, and groundwater monitoring. MDEQ has no information to show that Hercules has the required liners or groundwater monitoring program. **Therefore, Hercules is in violation of MHWMR Parts 264 and 265.**

Other regulatory violations that result from treating, storing or disposal of hazardous waste without a permit include:

- MHWMR 264.1, 264.90, and 265.1 and 265.90, require Hercules to implement a groundwater monitoring program to detect, characterize, and respond to releases from all solid waste management units and specified regulated units, including the surface impoundments, into the uppermost aquifer underlying the impoundments and the groundwater beneath the facility. **Hercules is in violation of Subpart F of MHWMR Parts 264 and 265, including MHWMR. 264.1, 264.90, and 265.1 and 265.90, by failing to implement the required groundwater monitoring program.**
- MHWMR. 264.1, 264.112, 265.1 and 265.112, require Hercules to have a written closure plan or plans meeting the requirements of MHWMR 264.112(b) and 265.112(b) for the surface impoundment. **Hercules is in violation of MHWMR 264.1, 264.112, 265.1 and 265.112, by failing to have the required closure plan.**
- MHWMR 264.142 and 265.142, require Hercules to have a detailed written estimate, in current dollars, of the cost of closing the facility at the point in the facility's active life when the closure would be most expensive. **Hercules is in violation of MHWMR 264.142 and 265.142, by failing to have a detailed written estimate, in current dollars, of the cost of closing surface impoundment.**
- **MHWMR 264.143 and 265.143, require Hercules to establish financial assurance for closure of the Surface Impoundment. Hercules is in violation of MHWMR 264.143 and 265.143, by failing to provide the required financial assurance.**
- **MHWMR 264.1, 264.118, 265.1 and 265.118, require Hercules to have a written post-closure plan or plans meeting the requirements of 40 C.F.R. §§ 264.118(b) and 265.118(c) for the Surface Impoundment. Hercules is in violation of MHWMR 264.1, 264.118, 265.1 and 265.118, by failing to have the required post-closure plan.**
- MHWMR 264.144 and 265.144, require Hercules to have a detailed written estimate, in current dollars, of the annual cost of post closure monitoring and maintenance of the facility in accordance with all applicable RCRA regulations. **Hercules is in violation of MHWMR 264.144 and 265.144, by failing to have a detailed written estimate, in current dollars, of post closure monitoring and maintenance of the Surface Impoundment.**

- MHWMR 264.145 and 265.145, require Hercules to establish financial assurance for post closure monitoring and maintenance of surface impoundments and the groundwater beneath the surface impoundments, in accordance with the written estimate discussed above. **Hercules is in violation of MHWMR 264.145 and 265.145 by failing to provide the required financial assurance.**
- As the owner/operator of a facility that treats, stores or disposes hazardous waste, pursuant to MHWMR 264.1, 264.147, 265.1, and, 265.147, Hercules is required to maintain liability coverage for sudden and nonsudden accidental occurrences. At a minimum, Hercules is required to maintain liability coverage in the amount of a \$1 million per occurrence, with an aggregate of \$2 million for sudden accidental occurrences. As for nonsudden accidental occurrences, Hercules is required to maintain liability coverage in the amount of at least \$3 million per occurrence, with an aggregate of at least \$6 million. **Hercules is in violation of MHWMR 264.1, 264.147, 265.1, and 265.147, by failing to maintain liability coverage for the hazardous wastes surface impoundments.**
- MHWMR 268.2(c), generally define “land disposal” as the placement of hazardous waste in or on the land, including, but not limited to, placement in a surface impoundment. **Hercules has disposed of hazardous wastes in a surface impoundment. By land disposing hazardous waste that exceeds the treatment standards in MHWMR 268.40, Hercules is in violation of MHWMR 268.40.**

We intend to initiate a formal enforcement on the aforementioned violations of MHWMR regulations. If you have any questions concerning this matter, please contact me at (601) 961-5782.

Sincerely,

A handwritten signature in cursive script, appearing to read "Jan M. Patton".

Jan M. Patton
Chemical Branch
Environmental Compliance and Enforcement Division